



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,423	02/28/2002	Mike Velten	021944-048US	3204

26720 7590 11/25/2009
LOCKE LORD BISSELL & LIDDELL LLP
ATTN: IP DOCKETING
600 TRAVIS STREET
3400 CHASE TOWER
HOUSTON, TX 77002

EXAMINER

FORD, GRANT M

ART UNIT	PAPER NUMBER
----------	--------------

2442

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

11/25/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

hoip@lockelord.com

Office Action Summary	Application No.		Applicant(s)	
	10/085,423		VELTEN ET AL.	
	Examiner		Art Unit	
	GRANT FORD		2442	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-11, 13-16, 21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species I, claims 1-11, 13-16, and 21-26 in the reply filed on 2/27/2009 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 6, and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Bishop et al. (US 6,904,458), hereinafter referred to as Bishop.

- a. As per claim 1, Bishop discloses a method comprising:
configuring a subordinate program with a monitoring program on a monitoring computer (Col. 9 lines 14-50 – note that application(s) to be installed to the client are subordinate to the monitoring software of the computing component in that the computing component has complete access and control over the application(s) to be installed at the client both at time of installation and at run-time); and

installing the configured subordinate program from the monitoring computer to a target computer (Col. 9 lines 26-50).

b. As per claim 6, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses wherein installing the subordinate program from the monitoring computer to the target computer comprises pushing the subordinate program to the target computer via the network (Col. 9 lines 26-51).

c. As per claim 9, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses wherein installing the subordinate program from the monitoring computer to the target computer comprises downloading the subordinate program from the monitoring computer to the target computer via the network (Col. 9 lines 25-61).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-5, 10-11, 13-16, 21-22, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop in view of *GENEREX USV-Management*, hereinafter referred to as USV.

Art Unit: 2442

a. As per claim 2, Bishop fails to explicitly disclose the monitoring computer receiving a message from the apparatus. USV teaches a monitoring computer receiving a message from a UPS apparatus (Para. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of receiving a message from an apparatus at a monitoring computer with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of monitoring locally attached uninterruptible power supplies for observing failure conditions (Para. 1).

b. As per claim 3, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses the monitoring program detecting whether a shutdown condition exists (Col. 8 lines 1-17, Col. 9 lines 51-65).

c. As per claim 4, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses transmitting a shutdown instruction from the monitoring program to the subordinate program if the shutdown condition exists (Col. 8 lines 1-17, Col. 9 lines 51-65).

d. As per claim 5, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses shutting down the target computer with the subordinate program based on the received shutdown instruction (Col. 8 lines 1-17, Col. 9 lines 51-65).

e. As per claims 10 and 14, Bishop discloses a system comprising:
a subordinate program configured by the monitoring program and adapted to be installed on the target computer by the monitoring program, the subordinate program adapted to receive a predetermined instruction and performing a shutdown

Art Unit: 2442

routine of an affected target computer (Col. 8 lines 1-17, Col. 9 lines 14-50). However, the prior art of Bishop fails to explicitly disclose the claimed first through third routines associated with the monitoring program.

USV teaches a monitoring computer having a monitoring program and adapted to receive data from the apparatus, the monitoring program comprising:

a first routine determining an alarm condition of the apparatus from the data (Para. 1-2), a second routine determining a target computer on the network effected by the alarm condition of the apparatus (Para. 2,4), and a third routine sending a predetermined shutdown instruction to the affected target computer over the network (Para. 2,4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of detecting an alarm condition, a target computer affected by the alarm condition, and sending a predetermined instruction to the affected target computer over the network with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of providing a UPS management software which monitors a locally attached UPS device for alarm conditions, and in the event of an alarm, functions to provide a simultaneous shutdown of several servers which are all supported by the same UPS (Para. 1,2,4).

f. As per claims 11 and 16, Bishop and USV teach the invention substantially as claimed above. However, Bishop fails to explicitly disclose wherein the apparatus is a UPS. USV teaches wherein the apparatus is a UPS (Para. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of monitoring an attached UPS device with the prior art of

Art Unit: 2442

Bishop. One of ordinary skill in the art would have done so for the purpose of providing remote UPS monitoring and in the event of an alarm, providing means for shutting down affected servers which are supported by the same UPS (Para. 1,4).

g. As per claims 13 and 15, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses wherein installing the subordinate program from the monitoring computer to the target computer comprises downloading the subordinate program from the monitoring computer to the target computer via the network (Col. 9 lines 25-61).

h. As per claim 21, Bishop discloses a system comprising:
a monitoring computer and a target computer (Figure 1, Col. 9 lines 26-50);
a network coupling the monitoring computer and the target computer (Figure 1);

a monitoring computer adapted to configure a subordinate program to be installed over the network on a target computer by the monitoring program and install the subordinate program on the target computer over the network (Col. 9 lines 26-50);

the target computer comprising an installed subordinate program and adapted to receive a network message including a shutdown instruction and shut down the target computer based on the received shutdown instruction (Col. 8 lines 1-17, Col. 9 lines 14-50). However, the prior art of Bishop fails to explicitly disclose the UPS and receiving and determining steps performed by the monitoring computer as claimed.

USV teaches a monitoring program adapted to receive a network message including data from the UPS (Para. 1-2), determine an alarm condition of the UPS from the data in the message (Para. 2,4), and determine a computer on the network affected by the alarm condition of the UPS (Para. 2,4), wherein the UPS sends a shutdown instruction (Para. 1,4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of detecting an alarm condition, a target computer affected by the alarm condition, and sending a predetermined instruction to the affected target computer over the network with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of providing a UPS management software which monitors a locally attached UPS device for alarm conditions, and in the event of an alarm, functions to provide a simultaneous shutdown of several servers which are all supported by the same UPS (Para. 1,2,4).

i. As per claim 22, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses wherein installing the subordinate program from the monitoring computer to the target computer comprises pushing the subordinate program to the target computer via the network (Col. 9 lines 26-51).

j. As per claim 25, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses wherein the subordinate program comprises portable code (Col. 6 lines 61-67).

k. As per claim 26, Bishop and USV teach the invention substantially as claimed above. Bishop additionally discloses wherein the subordinate program has

Art Unit: 2442

default configuration parameters that may be reset during installation on the target computer (Col. 9 lines 33-37 - see configuration parameters reset upon boot).

6. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop in view of *VERITAS WinINSTALL 2000*, hereinafter referred to as Veritas.

a. As per claims 7-8, Bishop fails to explicitly disclose wherein installing the subordinate program from the monitoring computer to the target computer comprises installing the subordinate program from a floppy diskette or other removable media, or emailing the subordinate program as a file of executable code from the monitoring computer to the target computer.

Veritas teaches installing the subordinate program from a floppy diskette or other removable media, or emailing the subordinate program as a file of executable code from the monitoring computer to the target computer (Page 1 Product Highlights (see push, pull, e-mail, internet/intranet, and CD-ROM distributions), Page 2 Multiple distribution options). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of removable media and e-mail distribution means with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of supporting a wide range of delivery mechanisms for ease of use in distribution of software and software updates (Page 2 Multiple distribution options).

7. Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop and USV further in view of Veritas.

a. As per claims 23-24, Bishop and USV teach the invention substantially as claimed above. However, Bishop fails to explicitly disclose wherein installing the subordinate program from the monitoring computer to the target computer comprises installing the subordinate program by pulling the subordinate program from the monitoring computer to the target computer via the network, or emailing the subordinate program as a file of executable code from the monitoring computer to the target computer.

Veritas teaches installing the subordinate program from the monitoring computer to the target computer comprises installing the subordinate program by pulling the subordinate program from the monitoring computer to the target computer via the network, and emailing the subordinate program as a file of executable code from the monitoring computer to the target computer (Page 1 Product Highlights (see push, pull, e-mail, internet/intranet, and CD-ROM distributions), Page 2 Multiple distribution options). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of removable media and e-mail distribution means with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of supporting a wide range of delivery mechanisms for ease of use in distribution of software and software updates (Page 2 Multiple distribution options).

Response to Arguments

8. Applicant's arguments filed 10/3/2005, with respect to the prior art of Baran have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Bishop, USV, and Veritas as outlined above.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GRANT FORD whose telephone number is (571)272-8630. The examiner can normally be reached on 8-5:30 Mon-Thurs alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571)272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2442

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. F./

Examiner, Art Unit 2442

/Shawki S Ismail/

Primary Examiner, Art Unit 2455